

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
MAX J. KUNEY COMPANY,

Appellant,

vs.

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 68

FINDINGS OF FACT,

CONCLUSIONS AND ORDER

Twenty-five days has elapsed since the mailing of the Proposed Findings of Fact, Conclusion and Order in the captioned and numbered appeal, and no exceptions having been filed by either the appellant or respondent, the Pollution Control Hearings Board enters its Findings of Fact, Conclusions and Order, which are in all respects identical with the Proposed Findings of Fact, Conclusion and Order.

This matter, concerning the appeal of an alleged open burning violation of regulations of the Southwest Air Pollution Control Authority, came before the Pollution Control Hearings Board (Walt

1 Woodward, hearing officer) in a hearing in respondent's Vancouver  
2 offices at 1:00 p.m., December 16, 1971.

3 Appellant was represented by W. S. Gear, Project Engineer.  
4 Respondent was represented by Edward K. Taylor, Executive Director,  
5 Jimmy Ablin, Chief of Abatement and Control, and by its counsel,  
6 James Ladley.

7 Witnesses were sworn and testimony heard.

8 On the testimony heard, the Pollution Control Hearings Board  
9 makes these

10 FINDINGS OF FACT

11 I.

12 On October 6, 1971, in the Port of Kalama, Cowlitz County, an  
13 employee of appellant firm engaged in a highway construction project  
14 nearby, began to add pieces of plywood, 2 X 4's and other scrap  
15 building materials to an existing open fire. Open burning of such  
16 material is prohibited by Regulation I of respondent authority.

17 II.

18 An official of respondent authority notified the employee of  
19 appellant firm that adding the banned material to the open fire was a  
20 violation of Regulation I, requested him to cease and to remove the  
21 material from the fire. The employee complied with both requests.

22 III.

23 Under date of October 6, 1971, respondent authority, by mail to  
24 appellant firm's home office in Spokane, issued a Notice of Violation  
25 and levied a civil penalty against appellant firm in the sum of \$100.  
26 The maximum allowable penalty is \$250.

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

IV.

The open fire to which appellant's employee was adding scrap building materials was kindled by the Port of Kalama under permit issued by the State Department of Natural Resources for the consumption of natural land clearing material. Appellant's undisputed testimony was that it had obtained permission of the Port of Kalama to add the scrap building material to the fire.

V.

Major highway construction projects are and for several months have been taking place along the route of Interstate Highway 5 in Clark and Cowlitz Counties. Concurrent jurisdictions of the State Department of Natural Resources and the Southwest Air Pollution Control Authority relative to consumption of waste materials by fire is a cause of some confusion among some contractors involved in these highway construction projects. The State Department of Natural Resources was not a party to this action and was not represented at the hearing, but the respondent authority reported that it is meeting with cooperation from the State Department of Natural Resources in an effort to achieve a "one permit" system.

VI.

In the instant case, appellant firm takes the position it was not in violation by adding material to a fire for which a permit already had been granted by a governmental agency.

From these Findings of Fact, the Pollution Control Hearings Board reaches these

1 CONCLUSIONS

2 I.

3 Appellant firm knew of respondent authority's Regulation I  
4 because of information it had received from respondent authority at  
5 the time appellant firm prepared its bid for the highway project.

6 II.

7 Appellant firm was in violation of Regulation I of respondent  
8 authority by attempting to burn scrap building material.

9 III.

10 There appear to be two mitigating circumstances. Appellant firm,  
11 apparently confused by waste burning regulations of two governmental  
12 agencies, incorrectly assumed it was committing no violation by adding  
13 dry scrap building material to a smoldering natural materials fire for  
14 which a permit had been issued. It also is noted that appellant firm  
15 promptly complied with a "cease and remove" order by an official of  
16 respondent authority.

17 IV.

18 The civil penalty of \$100, although a reduction from the allowable  
19 maximum of \$250, still appears to be somewhat excessive in view of the  
20 mitigating circumstances.

21 In view of these conclusions, the Pollution Control Hearings  
22 Board issues this

23 ORDER

24 I.

25 The Notice of Violation is sustained, but the civil penalty is  
26 remanded to respondent authority for assessment of a more appropriate  
27 amount.

. FINDINGS OF FACT,

II.

The Southwest Air Pollution Control Authority is commended for its efforts to work with the State Department of Natural Resources to eliminate confusion in the issuance of permits for fires in connection with Interstate Highway 5 highway projects, and is urged to continue such efforts so that a uniform, easily understood and easily enforced permit system may be established.

SIGNED at Olympia, Washington this 17th day of January, 1972.

POLLUTION CONTROL HEARINGS BOARD

Matthew W. Hill  
MATTHEW W. HILL, Chairman

Walt Woodward  
WALT WOODWARD, Member

James T. Sheehy  
JAMES T. SHEEHY, Member